

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

94-CR-6005T

v.

**ORDER**

MICHAEL T. STEVENS,

Defendant.

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By motion dated February 3, 2011, defendant Michael Stevens moves for an Order dismissing the criminal conviction entered against him on March 31, 1995, claiming that the district court lacked jurisdiction over him because pre-trial proceedings in this matter were conducted by a United States Magistrate Judge. Stevens claims that the judicial power of the United States resides exclusively with Judges appointed pursuant to Article III of the United States Constitution, ("Article III") and that because Magistrate Judges are not appointed pursuant to Article III, the Magistrate Judge was without authority to conduct any proceedings in this matter. Stevens suggests that because the Magistrate Judge lacked Article III judicial authority to conduct proceedings, this court lacked subject matter jurisdiction over him.

Defendant's motion is denied. Magistrate Judges are authorized by Congress to preside over numerous pretrial proceedings in both civil and criminal matters. See 28 U.S.C. § 636(b). In the instant case, a Magistrate Judge was properly appointed to oversee defendant's pretrial proceedings, and all such proceedings were

conducted by the Magistrate Judge within the scope of his Congressionally-authorized and judicially-granted authority. As a result, there was no defect in the defendant's criminal proceedings, and therefore defendant's motion is denied. Although defendant's motion is denied on the merits, I further deny defendant's motion on procedural grounds, as this claim could have been raised on direct appeal or in a habeas corpus petition. Because the claim could have been raised in prior proceedings, Stevens is barred from raising the issue in this motion. See e.g. Yick Man Mui v. U.S., 614 F.3d 50, 54 (2<sup>nd</sup> Cir., 2010) (claims that could have been brought on direct appeal are barred from being raised on collateral review absent cause and prejudice).

ALL OF THE ABOVE IS SO ORDERED.

S/ Michael A. Telesca

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MICHAEL A. TELESCA  
United States District Judge

DATED: Rochester, New York  
March 28, 2011